

APPEAL NO. 022672
FILED NOVEMBER 25, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on September 13, 2002. The hearing officer determined that the appellant's (claimant) compensable injury sustained on _____, does not extend to an injury of the left upper extremity or the cervical spine. The claimant appeals, contending that the hearing officer relied on an incorrect medical record and on the sufficiency of the evidence. The respondent (carrier) responds, urging affirmance.

DECISION

Reversed and remanded.

There is no dispute that the claimant was injured while working as a custodian on _____, when she was "jogging" in the rain from one building to another. The carrier accepted an injury to the claimant's low back. The claimant first sought medical attention on March 10, 2000, from her treating doctor who noted in his medical records that in addition to her injured back the claimant had complaints of her "arm hurting." At the CCH, the claimant testified that she was given a prescription and returned to work the following day; that she continued working that school semester; that she worked the summer school session; that work in the summer was more physically demanding because the custodians moved the furniture and stripped the floors; that when school resumed for the fall semester she continued to work; that she continued to have problems since the date of her injury but she was able to cope by taking the prescriptions she was given on her initial visit to the doctor; and that on September 27, 2000, she returned to the doctor. On that date the doctor notes that "She also reports she has been experiencing tingling in both upper extremities." He also notes that the claimant has no history of a neck trauma. The claimant also testified she had no previous injuries.

The carrier offered Carrier's Exhibit No. 2, admitted with no objection, which consisted of medical records that were sent to the carrier from the claimant's doctor's office. A review of the first three pages of those medical records reveal that the doctor's office apparently inadvertently included records from a patient other than the claimant. Those records are for a date of visit of March 7, 2000, have a different first name than the claimant's and have a different social security number than the claimant's. We are satisfied that the records were, in fact, those of a different patient. The hearing officer, relying on those initial pages from that medical record, in his Finding of Fact No. 3, states, "Claimant sought medical treatment for an ankle injury on 3/7/00, and made no complaint of a neck or left upper extremity injury." In as much as the hearing officer has relied on another patient's medical records in reaching his determinations we remand this case for further consideration. Accordingly, the hearing officer's decision and order are reversed and remanded back for further consideration of the correct medical record.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings, pursuant to Section 410.202, which was amended June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in the Texas Government Code in the computation of the 15-day appeal and response periods.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE WEST** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Margaret L. Turner
Appeals Judge